BANDAR NILAI SDN BHD

v.

MUTHUSAMY ETTI ARUNCHALA GOUNDAN & ORS

HIGH COURT MALAYA, SEREMBAN
LOW HOP BING J
[CIVIL SUIT NO: 22-75-1994]
25 OCTOBER 2004

CIVIL PROCEDURE: *Judgments and orders - Setting aside - Whether one registrar has jurisdiction to set aside order of another registrar in exercise of co-ordinate jurisdiction - Whether first registrar functus officio*

CIVIL PROCEDURE: *Jurisdiction - Registrar - Whether one registrar has jurisdiction to set aside order of another registrar in exercise of co-ordinate jurisdiction - Whether first registrar functus officio*

This was an appeal by the fifth and sixth defendants against the decision of the learned registrar dismissing their application in encl. 119 which sought to set aside another registrar's order. The defendants did not appeal against the order that had been duly entered, sealed and extracted. The question requiring determination was whether one registrar has the jurisdiction to set aside the order of another registrar in the exercise of co-ordinate jurisdiction.

Held (dismissing the appeal):

[1] A registrar who has made an order is *functus officio* in the sense that the registrar has performed the function having regard to the statutory power or obligation to perform that function, so that there is no further function or act for the registrar as the person under the statute or rule to perform. The power of the registrar is spent and a second decision, if made on the same subject, would be *ultra vires*. That being the case, the first registrar was *functus officio* and neither the first registrar nor any other registrar exercising co-ordinate jurisdiction had the jurisdiction to alter the order, or in the instant case, to set it aside. Therefore, the registrar's decision in dismissing encl. 119 was correct and hereby affirmed, with the result that the present appeal was devoid of merits. (pp 14 c-h)

Case(s) referred to:

Affin Bank Bhd v. WT Low & Ng Realty Sdn Bhd [2003] 1 CLJ 674 HC ***(refd)***

Arab Malaysia Finance Bhd v. Badiaddin Mohd Mahidin & Anor [1997] 1 CLJ 1 CA ***(refd)***

Bank Bumiputra Malaysia Bhd v. Halimah Awang [2002] 1 LNS 56 HC ***(refd)***

Bedwell v. Wood [1877] 2 QBD 626 ***(refd)***

Datuk Hussain Mohamed v. First Malaysia Finance Bhd (Bank Negara Malaysia, Intervener) [1990] 1 CLJ 258; [1990] 1 CLJ (Rep) 802 HC ***(refd)***

Hock Hua Bank Bhd v. Shari Murid [1981] 1 MLJ 143 ***(refd)***

Hongkong Bank Malaysia Bhd v. Mohammed Noor Tamliho [2002] 3 CLJ 139 HC ***(refd)***

Jayasinghe v. Minister for Immigration and Ethnic Affairs & Anor [1997] ALR 532 ***(foll)***

Minister for Immigration, Local Government and Ethnic Affairs v. Kurtovic [1990] 92 ALR 93 ***(refd)***

MUI Bank Bhd v. Cheam Kim Yu (Beh Sai Ming, Intervener) [1992] 4 CLJ 2229; [1992] 1 CLJ (Rep) 222 SC ***(refd)***

Re VGM Holdings Ltd [1941] 3 All ER 417 ***(foll)***

Legislation referred to:

National Land Code, ss. 256(3), 257

Rules of the High Court 1980, O. 15 r. 8

For the 5th & 6th defendants - Anthony Joseph; M/s Muthuvelu Param Rosdin & Co

For the interveners/defendants - Manian Raju; M/s Gunaretnam & Co

Reported by Suresh Nathan

JUDGMENT

Low Hop Bing J:

Appeal And Factual Background

Before me is enclosure (129) which is an appeal by the fifth and sixth defendants in the counterclaim ("D5 and D6") against the decision of the learned registrar ("the registrar") who had on 10 November 1999 dismissed D5 and D6's application in enclosure (119) which sought to set aside another registrar's order made on 5 May 1999 ("the order").

D5 and D6 did not appeal against the order which has been duly entered, sealed and extracted. It was not an order by default nor made in the absence of a party at the trial or hearing, as the order expressly stated that it was made in the presence of all the learned counsel concerned.

Question For Determination

The question for determination is whether one registrar has the jurisdiction to set aside the order of another registrar in the exercise of co-ordinate jurisdiction.

Submissions By Counsel And Decision Of Court

Mr. Anthony Joseph, learned counsel for D5 and D6, does not appear to have addressed the above question which is the crux of the appeal by D5 and D6 but has instead contended that O. 15 r. 8 of the Rules of the High Court 1980 requires an amendment to be made within 14 days after the making of the order.

For the interveners/defendants in the original action, Mr. Manian Raju submitted that the registrar has correctly dismissed D5 and D6's application in enclosure (119).

Having considered the above submissions, I am of the view that the order has become final and conclusive when there was no appeal against that order and is therefore binding on all the parties hereto.

Regarding the issue of whether the first registrar who has made the order was *functus officio,* it is necessary to hark back to fundamental principles pertaining to the doctrine of *functus officio*. This doctrine literally means having discharged a duty, and is an expression applied to an agent or donee of an authority who has performed the act authorised, so that the authority is at an end: *Bedwell v. Wood* [1877] 2 QBD 626; *The Dictionary of English Law* by Earl Jowitt, 1959.

A court is *functus officio* when it has already made a final pronouncement on the rights of the parties before it ie, once the rights of the parties have been determined as the effect of each proceeding is to bring all proceedings to an end: *Datuk Hussain bin Mohamed v. First Malaysia Finance Bhd (Bank Negara Malaysia, Intervener)* [1990] 1 CLJ 258; [1990] 1 CLJ (Rep) 802.

By way of illustration, in *Hock Hua Bank Bhd. v. Sahari bin Murid* [1981] 1 MLJ 143 FC, the learned judge had made an order for sale in a foreclosure proceeding, after hearing all the parties. There was no appeal against it. The respondent unsuccessfully applied to set aside the judgment, and subsequently applied again to set aside the previous orders. The learned judge thereupon set aside his order. The Federal Court in a judgment delivered by Chang Min Tat FJ (as he then was) held that the learned judge of the High Court could not do so as he was *functus officio*.

This Federal Court decision was followed by the Supreme Court in *MUI Bank Bhd v. Cheam Kim Yu (Beh Sai Ming, Intervener)* [1992] 4 CLJ 2229; [1992] 1 CLJ (Rep) 222 where in the judgment delivered by Harun Hashim SCJ (as he then was) it was held that the order for sale made by the learned judge under s. 256(3) and s. 257 of the National Land Code 1965 and subsequently perfected was a final order unless appealed against and that the learned judge being *functus officio* had no power to set it aside.

Hock Hua Bank, supra, was further followed by the Court of Appeal in *Arab Malaysian Finance Bhd v. Badiaddin bin Mohd Mahidin & Anor* [1997] 1 CLJ 1 in which the judgment delivered by Shaik Daud JCA (as he then was) held that it is settled law that one High Court cannot set aside a final order of another High Court, let alone its own final order.

See also the judgments of Ramly Ali J in *Hongkong Bank Malaysia Bhd v. Mohammed Noor Tamliho* [2002] 3 CLJ 139 HC; and Suriyadi bin Halim Omar J in *Bank Bumiputra Malaysia Bhd v. Halimah bt Awang* [2002] 1 LNS 56 HC; and Abdul Malik Ishak J in *Affin Bank Bhd v. WT Low & Ng Realty Sdn Bhd* [2003] 1 CLJ 674 HC, in which the doctrine of *functus officio* was applied.

Hence, the registrar who has made the order is *functus officio* in the sense that the registrar has performed the function having regard to the statutory power or obligation to perform that function so that there is no further function or act for the registrar as the person authorised under the statute or rule to perform: per Goldberg J of the Federal Court of Australia in *Jayasinghe v. Minister for Immigration and Ethnic Affairs and Another* [1997] ALR 532 at 542.

The power of the registrar is spent and a second decision if made on the same subject matter would be *ultra vires*: see eg, *Minister for Immigration, Local Government and Ethnic Affairs v. Kurtovic* [1990] 92 ALR 93 at 112.

My view is also fortified by the decision in *Re V.G.M. Holdings, Ltd.* [1941] 3 All ER 417, in which Morton J held that where Bennett J has made an order for a stay of execution which has been passed and entered, Bennett, J is *functus officio* and neither Bennett J nor any other judge of equal jurisdiction eg, Morton J has jurisdiction to vary the terms of such stay. The only means of obtaining any variation is to appeal to a higher tribunal.

The facts in *Re V.G.M. Holding, supra,* are substantially similar to those in the instant appeal with the judge there being interchanged with the registrar in the appeal before me. That being the case, the first registrar is *functus officio* and neither the first registrar nor any other registrar exercising co-ordinate jurisdiction has the jurisdiction to alter the order or, in the instant case, to set it aside.

In the circumstances, the answer to the above question for determination is in the negative, as one registrar has no jurisdiction to set aside the order of another registrar in the exercise of co-ordinate jurisdiction. I therefore hold that the registrar's decision in dismissing enclosure (119) is correct, which is hereby affirmed, with the result that this appeal in enclosure (129) is devoid of merits and is dismissed with costs.